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10/690,421

10/20/2003

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EXAMINER

LEWIS, RALPH A

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/690,421  
Filing Date: March 23, 2007  
Appellant(s): Steven S. Larsen

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Thompson E. Fehr  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 14, 2008 appealing from the Office action mailed August 01, 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### **GROUND OF REJECTION NOT ON REVIEW**

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. Appellant has withdrawn pending and Finally rejected claims 9 and 10 from the appeal on the grounds that they are identical to appealed claims 19 and 20 (see 10/14/2008 Brief Corrected Sections page 3).

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

|                       |        |                   |
|-----------------------|--------|-------------------|
| U.S. Patent 904,990   | Powers | November 24, 1908 |
| U.S. Patent 5,197,880 | Lovaas | March 30, 1993    |
| U.S. Patent 1,115,718 | Mosley | November 3, 1914  |
| U.S. Patent 656,300   | Perry  | August 21, 1900   |

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5, 6, 11, 12, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Powers (U.S. 904,990).

Regarding independent claims 1 and 11, Powers discloses an endodontic<sup>1</sup> instrument (Figs 1-3), which comprises a handle (B) having an elongated base with a threaded 11 blunt projection 12, 13 at a first end (11, 12, 13) of handle B; and a cap (A) containing a channel extending through a first end of the cap (note opening at top of A in Figure 2) with a first portion 10 being threaded for mating with the projection (11, 12, 13) of the elongated base of the handle (B). The cap (A) possesses a side and includes a second end 6 containing an aperture 14 through which endodontic file (c) projects. The diameter of the aperture 14 is selected to be larger than the diameter of the endodontic file (c) but smaller than the diameter of the file cap 17 attached to the endodontic file. In regard to claims 2, 16, 12 and 16, the handle base and cap have maximum diameters which meet the broadly claimed "substantially the same" limitation. In regard to claims 5 and 15, the aperture (14) extends to the side of the cap and on the side is enlarged (15) to dimensions sufficient to permit the introduction in the channel of the plastic cap (17) attached to an endodontic file.

Claims 3, 4, 7, 8, 13, 14, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (U.S. 904,990) in view of Lovaas (U.S. 5,197,880).

In regard to claims 3, 4, 13, 14, 19 and 20, Powers discloses an endodontic instrument, as described above, disclosed as being used with endodontic file (c) having

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<sup>1</sup> "Endodontic" generally refers to the branch of dentistry relating to the root canals of teeth. A dental "broach" is a file or cutting tool used to clean pulp and other tissue from the root canal of a tooth and today is typically referred to as an "endodontic file."

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blunt cap 17. Powers does not disclose the material of blunt cap 17; however, the selection of common widely used plastic for the material of cap 17 would have been obvious to one of ordinary skill in the art as a matter of routine in practicing the disclosed Powers invention. Moreover, to have formed an aperture in the cap 17 into which the file member 16 is inserted and secured would have been obvious to one of ordinary skill in the art as a routine common mechanical expedient. In regard to the “substantially same diameter” requirement of the file plastic cap and the handle, it is noted that appellant’s disclosed plastic cap 16 is to be fitted internally of cap 2 and that cap 2 has a diameter “substantially the same” as the handle (note claim 2). In light of appellant’s broad interpretations of the “substantially the same” language, the Powers device file cap 17 is deemed to meet the broad limitation.

In regard to claims 7, 8, 17, 18 and 20 and the limitation that the file moves away from then curves back toward a centerline which it eventually crosses. Lovaas discloses a tool for crimping endodontic files, and in doing so illustrates endodontic files with the specified configuration (Fig. 5). Lovaas implies that endodontic files shaped with such bowed configurations are advantageous for working on and enlarging root canals of non-linear shapes (Column 1, lines 22-27). It would have been obvious at the time of the invention to use a bent endodontic file as disclosed by Lovaas in combination with the endodontic instrument disclosed by Powers, in order that such files may be used on nonlinear root canals with a device that allows for ease in handling and angular adjustment of the file so it may be used more readily and with more satisfactory results (Powers, page 1, lines 9-18). Furthermore, it would have been obvious to one of

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ordinary skill in the art at the time of the invention to modify the instrument of Powers so that it can accept the endodontic files with blunt plastic caps as disclosed by Lovaas.

Claims 1, 2, 5, 6, 11, 12, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (U.S. 904,990) in view of Mosley (US 1,115,718) or Perry (US656,300).

To the limited extent that the end of projecting member 11, 12, 13 is deemed not to meet "blunt" limitation, Mosley (lines 27-38) and Perry (lines 50-68) are cited as teaching that similar such projections may be made blunt for holding dental instruments in a secure manner while still allowing for angular adjustment in the same manner as Powers. To have made the end of projecting member of the Powers more blunt as is known in the art as taught by Mosley and Perry to provide for a secure hold of a dental instrument would have been obvious to one of ordinary skill in the art.

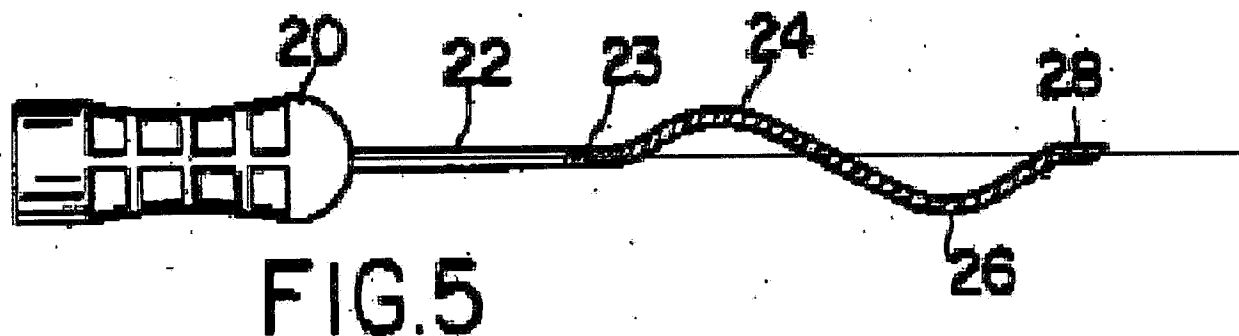
#### **(10) Response to Argument**

In response to the 35 U.S.C. 102 rejection based on Powers appellant argues that the end 13 of the handle (B) projection (11, 12, 13) is "pointed" rather than "blunt" as required by independent claims 1 and 11. Appellant further indicates that Powers refers at page 1, lines 95-97 to the end as a "conical portion." The examiner is of the position that "blunt" is a term of degree and that the illustrated rounded conical end of Powers reasonably meets the "blunt" limitation. The Powers end is not a sharpened

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end, but rather a blunt end that does not cut or pierce, but rather is wedged against the cap of the endodontic file (note Figure 3).

In response to the 35 U.S.C. 103 rejection based on Powers in view of Lovaas appellant does not argue the combination, but rather the interpretation that Powers discloses a “blunt” end on the handle projection. Again the examiner disagrees. In the past appellant has argued with respect to the teachings of Lovaas that the claimed file only crosses the center line once. As can be seen from the reproduced Lovaas Figure below, the file of Lovaas only crosses the center line once and then barely returns to the centerline without crossing it again.



In response to the 35 U.S.C. 103 rejection based on Powers in view of Mosley or Perry appellant does not argue the combination as applied, but rather the interpretation that Mosely and Perry teach blunt ends. More particularly, with respect to Mosely appellant argues that the end in Figure 5 is not “blunt” because it includes a roughened surface 4. The examiner simply disagrees with appellant’s interpretation of the term “blunt”. The roughened surface 4 is relatively flat and consequently reasonably meets the “blunt” limitation. With respect to Perry, appellant argues that the end of the handle



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is concave and consequently does not meet the "blunt" limitation. Again the examiner disagrees, the Perry end surface, even though concave, is not sharp, it is blunt.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ralph A. Lewis/

Primary Examiner, Art Unit 3732

Conferees:

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732

/Thomas Barrett/

TQAS TC3700